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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SWITCH, LTD., a Nevada limited liability
company,

Plaintiff,

vs.

STEPHEN FAIRFAX; MTECHNOLOGY; and
DOES 1 through 10; ROE ENTITIES 11 through
20, inclusive,

Defendants.

CASE NO. 2:17-cv-02651-GMN-EJY

**STIPULATED AMENDED
DISCOVERY PLAN AND
SCHEDULING ORDER**

(THIRD REQUEST)

Pursuant to LR IA 6-1 and LR 26-4, counsel for Plaintiff SWITCH, LTD. ("Plaintiff") and Defendants STEPHEN FAIRFAX and MTECHNOLOGY ("Defendants") hereby submit this Stipulated Amended Discovery Plan and Scheduling Order to extend the current discovery deadlines.

1 The parties make this third request for continuance in good faith after resolving the
 2 motions and various filings that have not yet been resolved by the Court. In short, this case
 3 involves substantial trade secrets that both parties would like to protect. No protective order has
 4 been entered which has resulted in extremely limited document production, which further
 5 prevents meaningful depositions and complete expert reports from being prepared and
 6 submitted.

7 Accordingly, to resolve the discovery impasse the parties are contemporaneously filing a
 8 stipulated protective order which will allow the parties to begin meaningful production of
 9 documents, depositions, and expert work. Given the impending holidays and other demands on
 10 counsel, the parties have agreed to the following extension to prevent further delays in the case
 11 and bring a resolution to the case.

12 In support of this Stipulation, the parties state as follows:

13 **1. Discovery Completed to Date**

14 The parties have served written discovery on each other. However, in the responses that
 15 have been served, both parties have objected to many of the requests on the grounds that there is
 16 no protective order in this case.

17 The parties have attempted over many months and multiple meet and confers to resolve
 18 this issue, including filing a Request for a Pretrial Conference and Submission of Proposed
 19 Protective Order¹ and Motion to Extend Deadlines for Disclosure of Experts and Expert
 20 Reports.² These filings are resolved by the contemporaneous stipulated protective order and this
 21 discovery plan, and should therefore be denied as moot.

22 Defendants served an initial expert report, and Plaintiff served a rebuttal expert report.
 23 Both were hampered by the lack of document production in this case.

24 **2. Discovery Remaining to be Completed**

25 The parties have reached an agreement regarding a stipulated protective order, which
 26 will be filed with the Court contemporaneously with this Stipulation.

27 There has been no document production in this case, but the parties have agreed to a
 28 date certain to respond to the pending discovery requests once the protective order is entered.

¹ (Dkt. No. 48).

² (Dkt. No. 55).

Depositions of the parties, and experts need to be set, as well as potential site visits.

3. Reasons why Discovery has not been Completed

Good cause exists to extend the discovery deadlines in this case. Good cause to extend a discovery deadline exists if it cannot reasonably be met despite the diligence of the party seeking the extension.”³

It became clear after the first discovery responses in June of 2019 that both parties would require a protective order to fully engage in discovery. Through July and August 2019, the parties engaged in several email and telephonic discussions in an attempt to form an acceptable protective order. Ultimately, Defendants filed their Request for Pretrial Conference and Proposed Protective Order on September 3, 2019, stating that, “given the number of times and the length of time that the parties debated this issue, it was clear that it was time for outside help.”⁴

The lack of a protective order has caused several issues in this case. It has prevented both sides from fully engaging in the discovery process, including document production. The parties cannot depose any potential witnesses without the proper documentation. However, the parties have reached an agreement regarding a stipulated protective order that will now allow discovery to proceed in full. The parties do not anticipate requesting any additional extensions of the discovery period.

The parties hereby stipulate to move the discovery deadlines in this case, including the deadlines for initial and rebuttal expert disclosures, which have passed.⁵ Under LR 26-4, “A request made after the expiration of the subject deadline will not be granted unless the movant also demonstrates that the failure to act was the result of excusable neglect.” Though this Stipulation is filed after the expiration of the expert deadlines, the parties have already taken other timely steps to address these deadlines. Defendants submitted an initial expert report. Plaintiff previously filed a Motion to Extend Deadlines for Disclosure of Experts and Expert Reports⁶ explaining that the lack of a protective order made it impossible for Plaintiff to prepare

³ *Derosa v. Blood Sys., Inc.*, No. 2:13-CV-0137-JCM-NJK, 2013 WL 3975764, at *1 (D. Nev. Aug. 1, 2013) (internal citations omitted).

⁴ Defendants’ Request for Pretrial Conference and Proposed Protective Order (Dkt. No. 48 at 4).

⁵ Stipulated Amended Discovery Plan and Scheduling Order (Dkt. No. 45).

⁶ (Dkt. No. 55).

an initial expert report. Plaintiff was able to submit a rebuttal expert report, though it was hampered by the lack of document production in this case.

4. Proposed Schedule for Completing all Remaining Discovery

Scheduled Event	Current Deadline	Proposed Deadline
Discovery Cut-Off	December 9, 2019 ⁷	April 30, 2020
Initial Expert Disclosures	October 10, 2019	June 1, 2020
Rebuttal Expert Disclosures	November 8, 2019	July 1, 2020
Dispositive Motions	January 8, 2020	July 31, 2020
Pretrial Order	February 7, 2020	August 31, 2020—this deadline is suspended if a dispositive motion is timely filed

The parties further agree that all discovery requests currently pending must be responded to by December 20, 2019.

It is so stipulated.

DATED this ____th day of November, 2019.

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⁷ “Any stipulation or motion must be made no later than November 18, 2019.” (Dkt. No. 45 at 3).

1 IT IS HEREBY ORDERED that the scheduling in this case will proceed as follows:

2 Discovery Cut-Off April 30, 2020

3 Initial Expert Disclosures June 1, 2020

4 Rebuttal Expert Disclosures July 1, 2020

5 Dispositive Motions July 31, 2020

6 Pretrial Order August 31, 2020—this deadline is
7 suspended if a dispositive motion is timely
8 filed

9
10 IT IS FURTHER ORDERED that Defendants' Request for a Pretrial Conference and
11 Submission of Proposed Protective Order (Dkt. No. 48) is DENIED AS MOOT.

12 IT IS FURTHER ORDERED that Plaintiff's Motion to Extend Deadlines for
13 Disclosure of Experts and Expert Reports (Dkt. No. 55) is DENIED AS MOOT.

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18 United States Magistrate Judge

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21 Dated: November 19, 2019
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